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## The Effect of International Treaties on Religious Freedom in Mexico

*Ricardo Hernández-Forcada\**

### I. INTRODUCTION: THE IMPORTANCE OF RELIGIOUS LIBERTY

Religious liberty is a fundamental right that should be guaranteed to every human being. It is one aspect of the liberty of thought and conscience.<sup>1</sup> A person's fundamental convictions are particularly important since they are the center around which the individual's life turns. The state should be the main protector of this liberty and should not only refrain from interfering with its enjoyment, but also foster conditions for individuals to exercise this liberty.

In Mexico, the development of this right has a complex history. While the Mexican people have always been able to have a religion, sometimes this ability has been limited. At times they have only been allowed to profess the state-mandated religion of Catholicism. At other times their religious beliefs have been subject to excessive regulations and limitations. Even now some of these regulations persist. Part of the current debate over religious freedom in Mexico involves the discussion of what role these regulations should play.

To fully understand the current debate over religious freedom in Mexico, one must have an awareness of its historical development, which differs from developments in many other Latin American countries.<sup>2</sup> This article first traces the evolution of Mexican religious freedom in Part II. Part III places that development into context by

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1. See JOSÉ LUIS SOBERANES FERNANDEZ, *EL DERECHO DE LIBERTAD RELIGIOSA EN MÉXICO* 9 (2001).

2. While a description of church-state relations in other Latin American countries is beyond the scope of this article, such descriptions could be helpful to understanding Mexico's unique development. See, e.g., David E. Doxey & Scott Stephens Thomas, *The Future of Religious Liberty in Argentina: Will a New Constitutional Mandate and Would Newly Proposed Laws Enhance Religious Liberty?*, 1995 *BYU L. REV.* 603; Eric W. Kramer, *Law and the Image of a Nation: Religious Conflict and Religious Freedom in a Brazilian Criminal Case*, 26 *LAW & SOC. INQUIRY* 35 (2001); Patrick J. Thurston, *The Development of Religious Liberty in Chile*, 2000 *BYU L. REV.* 1185.

examining some of the international agreements signed by Mexico. And finally, Part IV offers a few conclusions on how Mexico can better protect religious liberty.

## II. HISTORICAL DEVELOPMENT

Mexico has a long history of religious liberty. While Mexican people have always enjoyed the ability to profess religious convictions, they have not always been able to change their religion or choose to have no religion at all. The development of religious freedom in Mexico can be divided into four basic time periods: (a) religious intolerance and hegemony (1810–1873), (b) secularization of the State (1873–1917), (c) state regulation of religion (1917–1992), and (d) normalization of church-state relations (1992–present). Each of these periods will be discussed in turn.

### *A. Religious Intolerance and Hegemony (1810–1873)*

For three centuries before the Mexican Independence Revolution (1810–1821), Mexico lived under a colonial and viceroy regime, during which time a missionary pattern emerged where in the king and queen of Spain, while permitted to colonize the land, were ordered by the pope to evangelize the population. It is clear that only one religion would be taught under that order. Furthermore, professing a belief in any other religion was forbidden, which was enforced by the Holy Inquisition Courts.

Although the beginnings of Mexican independence were inspired by liberalism, the proponents of Mexican independence did not believe religious liberty should be an individual human right. Accordingly, all documents of the period contained references to a single acceptable religion.

In fact, in 1811, Ignacio López Rayón described “the elements of a constitution that would guarantee our happiness.”<sup>3</sup> The first section stated that “The Catholic religion will be the only religion, without tolerance for any others.”<sup>4</sup> In the third section, Rayón said “The doctrine [of the church] will be upheld by the vigilance of the

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3. Ignacio López Rayón, *Los Elementos de Nuestra Constitución* (1811), in LA INDEPENDENCIA SEGÚN IGNACIO RAYÓN 237, 238 (Carlos Herrejón ed., 1985) (“los Elementos de una Constitución que ha de fijar nuestra felicidad”).

4. *Id.* (“[L]a religión católica será la única sin tolerancia de otra . . .”).

Tribunal of Faith.”<sup>5</sup> Similarly, José María Morelos, in his famous *Sentimientos de la Nación*,<sup>6</sup> established the foundation for what would be the Constitution of 1824. The second article of this document asserted that “the Catholic religion will be the only religion and no other will be tolerated.”<sup>7</sup>

The Constitutional Decree for the Liberty of Mexican-America, signed on October 22, 1814, set forth in its first article that “[t]he Roman Catholic Apostolic Church should be the only one”<sup>8</sup> professed by the state and further provided for the revocation of citizenship when someone changed religion. This result was similar to the punishment for the crime of treason. In the sixteenth article the decree stated, “[O]ne loses his citizenship for the crimes of heresy, apostasy, and crimes against the state.”<sup>9</sup>

The Political Constitution of the Spanish Monarchy of March 19, 1812,<sup>10</sup> the law that briefly governed New Spain until it was suspended by Viceroy Venegas only to be reestablished by Calleja in 1813, also had this prohibition. Article 12 stated “The religion of the Spanish nation is and always will be the Roman Catholic Church, the only true church.”<sup>11</sup> Accordingly, it prohibited the exercise of any other religion.

At the dawn of independence in 1821, Emperor Agustín Iturbide’s Plan, signed at Iguala, proposed as the first principle of the emerging country: “The Religion of New Spain is and always will be the Roman Catholic Church, without tolerance for any other.”<sup>12</sup>

5. *Id.* (“El dogma será sostenido por la vigilancia del Tribunal de la Fe.”).

6. JOSÉ MARÍA MORELOS, *SENTIMIENTOS DE LA NACIÓN* [THE FEELINGS OF THE NATION] (1814).

7. *Id.* art. 2 (“[L]a religión católica será la única sin tolerancia de otra.”).

8. DECRETO CONSTITUCIONAL PARA LA LIBERTAD DE LA AMERICA MEXICANA [CONSTITUTIONAL DECREE FOR THE LIBERTY OF MEXICAN-AMERICA] art. 1 (1814) (“La religion católica apostólica romana es la única que debe profesar el Estado . . .”).

9. *Id.* art. 16 (“[L]a calidad de ciudadano se pierde por el crimen de herehía, apostasía y lesa nación.”).

10. This law governed New Spain, which was independent after 1821.

11. CONSTITUCIÓN POLÍTICA DE LA MONARQUÍA ESPAÑOLA art. 12 (1812), *reprinted in* JOAQUÍN MANTECÓN SANCHEZ, *EL DERECHO FUNDAMENTAL DE LA LIBERTAD RELIGIOSA: TEXTOS, COMENTARIOS Y BIBLIOGRAFÍA* 261 (1996), *available at* <http://www.juridicas.unam.mx/infjur/leg/conshist/pdf/1812.pdf> (“La religión de la Nación española es y será perpetuamente la católica, apostólica romana, única verdadera.”).

12. Agustín de Iturbide, *Plan del Señor Coronel D. Agustín de Iturbide* (1821), *reprinted in* PLANES POLITICOS, PROCLAMAS, MANIFIESTOS Y OTROS DOCUMENTOS DE LA INDEPENDENCIA AL MÉXICO MODERNO 1812–1940, at 27 (Román Iglesias González ed., 1998), *available at* <http://www.bibliojuridica.org/libros/1/121/4.pdf> (“La Religión de la

Additionally, the 1824 Federal Constitution of the United Mexican States declared in Article 3 that “[t]he religion of the Mexican Nation, is, and will be perpetually, the Roman Catholic Apostolic. The Nation will protect it by wise and just laws, and prohibit the exercise of any other whatever.”<sup>13</sup>

The subsequent constitutional projects of the 1830s and 1840s<sup>14</sup> continued in the same vein, and the second paragraph of the 1842 draft constitution limited the freedom of the press by prohibiting attacks against religious dogma, the Holy Scriptures, or moral and good customs.<sup>15</sup>

The first significant change came with Ayutla’s Plan in 1854 and his Organic Statute of the Mexican Republic, which included a promising innovation.<sup>16</sup> Article 25, Clause IV clarified that one lost citizenship for one’s religious state. Juan Alvarez presided over the drafting of the Plan of Ayutla in 1857 and promulgated a new constitution through a moderate, Ignacio Comonfort. The draft began, “In the name of God and with the authority of the Mexican people,”<sup>17</sup> and then continued with a series of liberal provisions<sup>18</sup> accompanied by no religious pronouncements of any kind. This marked the beginning of the secularization of the Mexican State,

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Nueva España es y será católica, apostólica y romana, sin tolerancia de otra alguna.”).

13. CONSTITUCIÓN FEDERAL DE LOS ESTADOS UNIDOS MEXICANOS [FEDERAL CONSTITUTION OF THE UNITED MEXICAN STATES] art. 3 (1824), *available at* <http://www.juridicas.unam.mx/infjur/leg/conshist/pdf/1824.pdf>, *translation available at* <http://www.tamu.edu/ccbn/dewitt/constit1824.htm> (“La religión de la nación mexicana es y será perpetuamente la católica, apostólica, romana. La nación la protege por leyes sabias y justas, y prohíbe el ejercicio de cualquiera otra.”).

14. Specifically, those of 1836, 1839, and 1842.

15. *See* BASES DE ORGANIZACIÓN POLÍTICA DE LA REPÚBLICA MEXICANA [BASES OF POLITICAL ORGANIZATION OF THE MEXICAN REPUBLIC] art. 9, c. III (1842), *available at* <http://www.juridicas.unam.mx/infjur/leg/conshist/pdf/1842.pdf> (“Los escritos que versen sobre el dogma religioso o las sagradas escrituras, se sujetarán a las disposiciones de las leyes vigentes . . . .”); *id.* art. 196 (“contra la religión, contra la moral y buenas costumbres”).

16. TENA RAMIREZ FELIPE, LEYES FUNDAMENTALES DE MEXICO (1808–1997) 1180 (1997).

17. CONSTITUCIÓN FEDERAL DE LOS ESTADOS UNIDOS MEXICANOS [FEDERAL CONSTITUTION OF THE UNITED MEXICAN STATES] pmb. (1857), *available at* <http://www.juridicas.unam.mx/infjur/leg/conshist/pdf/1857.pdf> (“En el nombre de Dios y con la autoridad del pueblo mexicano.”).

18. Some of the liberal provisions included: free manifestation of ideas, except for those that attack morality (Article 7); the rights of third persons, and public order (Article 7); liberty to write and publish with limits on topics touching private life, morality, and public peace (Article 7); free association (Article 9); and prohibition against privileges (Articles 12 and 13). *Id.*

even though such secularization was not made explicit until after 1873.

The Reform Laws (1859–1861) also set the stage for secularization.<sup>19</sup> They were a collection of legal acts<sup>20</sup> that gave rise to three fundamental aspects of religious liberty: (a) the separation of civil matters from ecclesiastical matters, (b) the liberty to exercise the religion that one prefers, and (c) the incompetence of the state to comment on religious topics.

### *B. Secularization of the State (1873–1917)*

The Second Empire, that of Maximiliano of Hapsburg, conferred special privileges on certain ecclesiastical leaders and signified a pause in the development of religious liberty. However, the Second Empire also restored a republican government and ultimately established the explicit separation of church and state. This separation between church and state was evident in the first article of the 1873 reforms to the 1857 Constitution, which stated, “The State and the Church are independent from each other. Congress cannot dictate laws creating or prohibiting any religion.”<sup>21</sup>

The conflict between the liberals, who desired greater religious freedom, and the conservatives, who wished to maintain privileges for ecclesiastical leaders, persisted during the latter part of the nineteenth century. The government of General Porfirio Díaz exemplified this conflict. That government did not significantly change the conditions of religious liberty in Mexico. While maintaining an ostensibly liberal regime, the Díaz government was pragmatically on peaceful terms with the Catholic ecclesiastical hierarchy and did not significantly improve relations with any other religions.

### *C. State Regulation of Religion (1917–1992)*

The Mexican Revolution began in 1910 and initiated a return to liberal principles. This return even went to questionable extremes in some cases. For example, the Constitution of 1917, otherwise

19. FELIPE, *supra* note 16.

20. This collection included: Law of Nationalization of Ecclesiastical Property (1859), Law of Civil Marriage (1859), Law of Civil Registry (1859), Law of Civil State of the People (1859), Secularization of Cemeteries (1859), Law of Festival Days (1859), Law of Liberty of Worship (1860), and Secularization of Hospitals and Charitable Organizations (1861).

21. FELIPE, *supra* note 16.

known as the Constitution of the Revolution, preserved the spirit of the Reform Laws, but added the following provisions: (a) state education was to be secular,<sup>22</sup> (b) religious vows and monastic orders were prohibited,<sup>23</sup> (c) public worship outside of churches was restricted,<sup>24</sup> (d) church-owned or administered property was subject to state control,<sup>25</sup> and (e) religions were prohibited from owning charitable organizations.<sup>26</sup>

The most controversial of these provisions, which some scholars believed contradicted the freedom established in Article 24, was Article 130. In the text of the Constitution of 1917, Article 130 established the following regulations: (a) oaths did not have legal effects, (b) churches did not have legal personality, (c) local legislatures determined the number of ministers allowed, (d) only naturally-born Mexicans could serve as ministers of worship, (e) active and passive political votes of ministers of worship were prohibited, (f) ministers could not criticize laws or authorities, (g) religious ministers could

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22. See CONSTITUCIÓN POLITICA DE LOS ESTADOS UNIDOS MEXICANOS [POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES] art. 3 (1917), *available at* <http://www.juridicas.unam.mx/infjur/leg/conshist/pdf/1917.pdf> [hereinafter CONST.]. The 1917 Constitution provides the following:

La enseñanza es libre; pero será laica la que se dé en los establecimientos oficiales de educación, lo mismo que la enseñanza primaria, elemental y superior que se imparta en los establecimientos particulares.

Ninguna corporación religiosa, ni ministro de algún culto, podrán establecer o dirigir escuelas de instrucción primaria.

Las escuelas primarias particulares sólo podrán establecerse sujetándose a la vigilancia oficial.

En los establecimientos oficiales se impartirá gratuitamente la enseñanza primaria.

*Id.*

The English translation is as follows:

Education is free; but the education given by official institutions of education will be secular, the same as the primary, elementary, and higher education that is given in private schools.

No religious corporation or minister can establish or direct elementary schools.

Private elementary schools can only be established if they submit to official supervision.

In official establishments elementary instruction is given freely.

*Id.* This same article was reformed in 1934 under the Government of General Lázaro Cárdenas by adding characteristics of socialism to the education provided by the state. In 1946, the law was restored to convey the concept that education was exclusively secular.

23. See *id.* art. 5.

24. See *id.* art. 24.

25. See *id.* art. 27, cl. II.

26. See *id.* cl. III.

not collaborate for political purposes, (h) ecclesiastical studies are not accredited, (i) religious publications could not comment on public matters, (j) political associations could not maintain ties with religious denominations, (k) political meetings in churches were prohibited, and (l) religious ministers were prevented from inheriting, except from relatives up to the fourth degree.<sup>27</sup>

*D. Normalization of Church-State Relations (1992–Present)*

In the Constitution of 1992, many of these excessive restrictions disappeared while others were eased. For example, public worship outside of churches is no longer completely prohibited, only regulated. Similarly, state-sponsored education remains generally secular.<sup>28</sup> It is entirely acceptable that state education be secular since the current role of the state is not to project itself into religious affairs or to favor certain religions at the expense of others, especially minority religions.

As previously mentioned, the Constitution of 1992 changed Mexican church-state relations by allowing public worship outside of churches.<sup>29</sup> The Constitution of 1992 also conferred legal personality on churches and established the policy of state nonintervention in the internal affairs of churches.<sup>30</sup> Despite this progress, the law still does not allow religious ministers to hold public office unless they leave their ministry within a defined time period.<sup>31</sup> Furthermore, religious groups and churches cannot form associations with political goals despite the fact that Mexican citizens enjoy the right to vote and actively participate in the political process.<sup>32</sup> Additionally, certain restrictions prevent religious leaders from being heirs of individuals whom they have spiritually helped unless the testators are relatives of the religious leader.<sup>33</sup>

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27. *See id.* art. 130.

28. *See* PODER EJECUTIVO, SECRETARÍA DE GOBERNACIÓN, DECRETO art. 3 *in* DIARIO OFICIAL, Jan. 28, 1992, at 3, *available at* <http://www.juridicas.unam.mx/infjur/leg/constmex/pdf/rc121.pdf> [hereinafter 1992 CONSTITUTIONAL AMENDMENTS].

29. *See id.* art. 24.

30. *See id.* art. 130.

31. *See id.*

32. *See id.*

33. *See id.*



## III. ADOPTION OF INTERNATIONAL AGREEMENTS

In addition to expanding religious liberty in its own laws, Mexico has entered into various international agreements that further protect religious liberty in Mexico. In 1948, Mexico adopted the Universal Declaration of Human Rights ("UDHR"), which consecrates freedom of thought, conscience, and religion as human rights.<sup>34</sup>

In 1968, Mexico signed the Proclamation of Teheran. The Proclamation established that the laws of every nation should grant civil, political, economic, social, and cultural rights to all people regardless of their religion.<sup>35</sup> The Teheran Proclamation further proclaimed that the denial of human rights based on religion endangers liberty, justice, and peace in the world.<sup>36</sup>

Mexico also adopted the Vienna Declaration and Programme of Action in 1993.<sup>37</sup> In the context of religious freedom, this instrument asserts that human rights schemes should account for the peculiarities and cultural heritages of different religions.<sup>38</sup> Furthermore, the declaration affirms that the religious minorities rights<sup>39</sup> and educational rights should be respected without distinction of race or religion.<sup>40</sup>

In 1963, Mexico subscribed to the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>41</sup> The third article of the convention establishes the importance of eliminating race-based discrimination, especially in the context of access to religion.<sup>42</sup>

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34. *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., art. 18, U.N. Doc. A/810 (1948), available at <http://www.unhchr.ch/udhr/lang/eng.htm> ("Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.").

35. See *Proclamation of Teheran*, art. 5, at 3, U.N. Doc. A/CONF. 32/41 (1968), available at [http://www.unhchr.ch/html/menu3/b/b\\_tehern.htm](http://www.unhchr.ch/html/menu3/b/b_tehern.htm).

36. See *id.* art. 11.

37. See U.N. Doc. A/CONF. 157/23 (1993), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument).

38. See *id.* art. 5.

39. See *id.* art. 19.

40. See *id.* art. 33.

41. *United Nations Declaration on the Elimination of All Forms of Racial Discrimination*, G.A. Res. 1904, U.N. GAOR, 18th Sess., U.N. Doc. 2106A (entered into force 1969), available at [http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm).

42. See *id.* art. 3.

Lastly, Mexico is a signatory to the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (“1981 Declaration”).<sup>43</sup> While Mexico signed this document, it did so with reservations concerning the first article, which prohibited limitations on public worship. Such limitations were required at the time by Article 24 of the Mexican Constitution, which stated:

All men are free to profess the religious belief most pleasing to them as well as practice related religious ceremonies, devotions or acts of worship either in their church or in their own home, as long as such activity does not constitute a crime or act punishable by the law. Every religious act of public worship should be celebrated within the churches, those churches being under the monitoring of the authorities.<sup>44</sup>

In contrast to the Mexican Constitution, the first article of the 1981 Declaration established the following:

Everyone shall have the right to freedom of thought, of conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.<sup>45</sup>

Even today, Mexico retains its reservations regarding the 1981 Declaration because the Mexican constitutional text, modified in 1992, still restricts certain acts of public worship. The third paragraph of Article 24 now reads: “Religious acts of public worship are ordinarily celebrated within churches. Those celebrated outside of these buildings in extraordinary circumstances are subject to regulatory law.”<sup>46</sup>

#### IV. CONCLUSION

The remaining barriers to compliance with these international

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43. G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/684 (1981), available at [http://www.unhchr.ch/html/menu3/b/d\\_intole.htm](http://www.unhchr.ch/html/menu3/b/d_intole.htm) [hereinafter *1981 Declaration*].

44. See CONST., *supra* note 22, art. 24.

45. See *1981 Declaration*, *supra* note 43, art. 1.

46. 1992 CONSTITUTIONAL AMENDMENTS, *supra* note 28, art. 24 (“Los actos religiosos de culto público se celebrarán ordinariamente en los templos. Los que extraordinariamente se celebren fuera de éstos se sujetarán a la ley reglamentaria.”).

agreements are controversial changes based on the historical, religious, political, and social context of Mexico. Some of the areas in which Mexico can improve its religious liberty protections are: (a) allowing acts of external public worship, (b) ensuring adequate parental rights to educate children in the parents' religion, (c) recognizing individual religions in public schools, (d) allowing religious groups to use modern channels of mass communication, (e) allowing for conscientious objectors, (f) conferring civil effect upon religious marriages, (g) allowing individualized religious assistance in hospitals and prisons, and (h) respecting the observance of Sabbath days and holidays of all religions.

The debate over these topics is intense, and many of these restrictions apply not only to religious ministers but to others as well. One example of such nonspecific restrictions is the limitation on means of electronic communication, which is apportioned by the state.

In addition to the areas in which Mexico can improve protection of religious freedom, the principle building block of religious tolerance and liberty in Mexico is in doubt—the principle of secularity. The concept of secularity does not mean that the state should be anti-religious but that it should be open to every type and form of religion. This openness is best maintained if the state continues to act to ensure equal opportunity for all religions and churches. This is most important for the protection of all convictions, whether religious or not, and is therefore the starting point for respecting pluralism and diversity.

Religious liberty is fundamentally guaranteed in Mexico even though there are certain strict limitations. Each individual may profess, individually or in a group, whichever religion he desires; he can change religion or can choose not to profess any religion at all. The limitations on religious freedom in Mexico can best be understood in the context of its history—including a century excessively burdened with interference from the Catholic Church, from the Catholic clergy into public life, from the clergy's excessive privileges and economic perks, and from the status of the Catholic Church as the only acceptable religion.